

ARIZONA RACING COMMISSION

608TH REGULAR MEETING

WEDNESDAY, OCTOBER 12, 2011

MINUTES OF REGULAR MEETING

A public meeting of the Arizona Racing Commission was convened on Wednesday, October 12, 2011, beginning at 10:00 a.m. in the Building Conference Room, Suite 250, at 1110 West Washington Street, Phoenix, Arizona 85007.

Present:	Chair	Erin Owens
	Vice-Chair	A. Melvin McDonald
	Commissioner	Thomas E. Kelly
	Commissioner	Burton S. Kruglick
	Commissioner	Jay McClintock

Also Present: Lonny T. Powell, Director, Mary D. Williams, Assistant Attorney General, Christopher Munns, Assistant Attorney General, and Cassie Goodwin, Commission Secretary.

A. Call to Order

Chair Owens called the 608th Regular Meeting of the Arizona Racing Commission to order at 10:06 a.m. The following matters were discussed, considered and decided at the meeting:

Approval of the Minutes:

Minutes of the 607th Regular Meeting held on Wednesday, September 14, 2011 – **Commissioner Kelly** moved to approve the minutes. **Commissioner McClintock** seconded the motion. Motion Carried.

B. New Business

- 1. Appeal of Director's Order, Appellant William Bainum, Case No. 11A-066-DOR. Chair Owens** reviewed the hearing format with those present and recognized Attorney Roland Arroyo, counsel for appellant, William Bainum. **Attorney Arroyo** stated that the appeal was based on the appellant's belief that the State's Veterinarian testing procedures and practices led to cross contamination, the horses may have been mistakenly medicated by the veterinarian (Dr. Day), and the penalty imposed is excessive and unjust. **Assistant Attorney General Williams** responded, stating that the appellant failed to demonstrate that the integrity of the urine or blood samples were compromised or contaminated, there is no evidence that Dr. Day or his staff administered the drug to the horse, and that the penalties are not excessive. AAG Williams requested the Commission to dismiss the appellant's Appeal and Affirm the Director's Order with the exception that the date of October 26, 2011 (on page 7, paragraph 28) be corrected to reflect March 26, 2011. **Chair Owens** explained the Commission's motion options. **Chair Owens** moved to Modify the Director's Order and increase the suspension from 120 days to 180 days and leave the fine at \$1,000.00. She believes the Commission has a responsibility to the public that Arizona is running a fair and credible sport in which pari-mutuel wagering takes place and a responsibility to the horse and riders. Appellant has a series of repeated offenses on a significantly higher level of categories that puts all those items she just mentioned in jeopardy. Appellant has showed a repeated lack of accountability in responsibility to accept or to show any cause of why his continued bad tests occur only to point the finger in various directions with no credibility and no evidence to support that claim. So, not only does she support the Director's sanctions but she would actually recommend the increase to the maximum to make sure that this is an industry that is credible and fair. She believes the Commission has a responsibility to make sure there is an even playing field for the competitors, the trainers, the horses and the owners. **Commissioner McDonald** commented he believes there is something wrong with the process; that when someone wants to exercise their right of review, every time they go to the next level, they get "whacked" by additional penalties. The Commission is here today to consider what the Director has done. They have already had an enhancement once and to now punish him again by increasing the penalties even above the Director's is be bad policy. He believes that it leads people to the conclusion that when you want something reviewed, whether you're right or wrong, the Commission will punish them for doing that by amending yet again so that you have the Stewards at 60 the Director at 120 and then the Commission at 180 days. That, he thinks, has a chilling effect upon the review process so he vehemently opposes that kind of a rule. It intimidates those that might have an otherwise legitimate grievance from believing that if they go there and fail

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they are going to get whacked. He has a problem with adding penalties to the Order as this would set precedence to any future appeal that there will be more severe penalties and discourage appellants who may have a valid claim. **Chair Owens** commented that she would disagree as there is no history to support that. Other people have come before in the appeal process and have gotten additional penalties and in some cases others have not. Mr. Bainum, in prior history, had come to the Commission and received a lesser penalty so she doesn't know that history actually support Commissioner McDonald's concerns. **Commissioner McDonald** believes if the enhancement is made to the penalties, the Commission will set precedence. **Chair Owens** believes to reduce the penalties may also set precedence. Commission member should look at what is before them today to determine if it justifies additional penalties, the same penalty, or lesser penalty. Motion failed for lack of a second. **Commissioner Kelly** moved to deny the appeal and affirm the Director's Decision. **Commissioner McClintock** seconded the Motion. (Aye: McClintock, McDonald, Kelly and Kruglick; Nay: Owens). Motion Carried.

Commissioner Kruglick moved to Amend the Director's Decision and reduce the suspension to 60 days and reduce the fine to \$500.00. He believes the Commission needs to be careful in their decisions as they affect the livelihood of people and their ability to carry on a profession. The Commission needs to be careful of how far it wants to carry some of these things and realize if they [the licensee] get back into trouble and have more problems, it brings forth another situation. **Commissioner McDonald** said he would second the motion if the fine was \$1,000.00. **Commissioner Kruglick** amended his motion to leave the fine at \$1,000.00. **Commissioner McDonald** seconded the Amended Motion. After advice from **Counsel Christopher Munns**, **Chair Owens** called for a vote on the Amended Motion. (Aye: McClintock, McDonald and Kruglick; Nay: Kelly and Owens) Motion Carried and the Original Motion was Amended. **The Appeal has been granted in that the Director's Order is affirmed for the Fine of \$1,000.00 and Modified to reduce the Suspension from 120 days to 60 days.** After the vote on the Motion, **Counsel Christopher Munns** explained the parliamentary rules governing amendment of a motion on the table and then voting on the amended motion.

2. **Issues Raised by the Horsemen's Benevolent & Protective Association ("HBPA") during the September 14, 2011 Commission Meeting (Discussion Items Only)**
 - a. **Turf Paradise Stall Allocation Practices**
 - b. **Turf Paradise Simulcast Agreement with Hoosier Park**

Representatives from the HBPA and Tuft Paradise were present and addressed the Commission on Agenda Items 2.a through b above. The Commission received verbal agreements from both parties that they will work together, to meet and communicate schedules, to resolve their issues.

- c. **Department's recent changes in licensing cycle for grooms:** **Director Powell** advised there were several meetings regarding the Department becoming a self funding Agency. All industry stakeholder representatives were invited to attend and various discussions took place giving the opportunity for input and comments. HBPA was present at the meetings, there were no objections or concerns raised regarding the expiration date of the grooms' licenses made at those meetings, and the Commission voted on the current rules in a public meeting where the HBPA also offered no opposition or concern. **Mr. Miller** commented that the minutes of the meetings indicated the expiration date of the grooms' licenses was to be June 30, 2012 but the Department "backed it up" eight months.
- d. **Alleged violations of A.A.C. R19-2-113(C)(2) by owners, trainers and authorized agents at Turf Paradise during past racing meetings:** **Director Powell** advised this matter is under review by the Department and he is unable to comment at this time. This Item will be placed on the November 09, 2011 Agenda for a status report at the request of the HBPA however, the Department and Commission will have no comment pending the review.

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3. **The Future of County Fair Racing in Arizona (Commissioner Kruglick Request): Mr. Casey Faunce** addressed the Commission, advising he has spoken with all the County Fair Associations and, due to the significant cuts in funding from the State, the County Fairs are not running horse races as there is no money. He doesn't see any hope for County Fair racing unless the State funding is reinstated or private businesses provide funding. Everyone he has talked to with the exception of Pima County, cannot afford to run the horse races.

C. Information Reports

1. Department Monthly Update

- a. **Commencement of 2011-2012 Turf Paradise Live Race Season: Director Powell** reported Turf has opened strong.
- b. **ALL ADOR Employee "Meet and Greet" at Turf Paradise on September 23, 2011: Director Powell** reported there was a meeting held at Turf in which all employees (Phoenix and Tucson) attended.
- c. **Annual Statutorily Required Presentations Submitted to the Governor's Office**
 1. **2012 – 2013 Budget**
 2. **2010 – 2011 Annual Report**

Director Powell reported the Department has met its statutorily obligated requirements on the 2012-2013 Budget and has filed the 2010-2011 Annual Report

- d. **2012 Department Operation Changes Update: Director Powell** reported the Florida Thoroughbred Breeders & Owners Association has hired him to serve as their new CEO. His last day as Director of the Department will be December 31, 2011 and he will start his new Florida responsibilities the following week in January 2012. **Director Powell** will work closely with the Commission, ADOR senior staff and the Governor's Office in order to assure an orderly interim and transition. He thanked the Commission, his staff and the industry leaders for their support in taking the Department from the edge to a self-funding agency.

Chair Owens requested that a special meeting be scheduled soon to move the process along without delay. Notifications will be sent out once the Director obtains a green light from the Governor's office..

- e. **Yavapai Status Update: Director Powell** reported the Yavapai Permit discussion to be made by the Commission will be on the November 09, 2011 meeting Agenda.

2. Permittee Reports:

- a. **Turf Paradise: Vince Francia, General Manager**, advised Turf opened better than last year.
- b. **Tucson Greyhound Park: Tom Taylor, General Manager**, reported that Pima County Fair is still running due to subsidies provided by Tucson Greyhound Park and Turf Paradise; other counties are not receiving any financial assistance. If the other counties were to receive subsidies they would be running too. TGP is glad the summer is over and hopes to have a good 2012 season.
- c. **Rillito: Patti Shirley, Vice President**, reported there is still the problem with the wiring needing to be replaced. She is working with the County, who has agreed to pay for the re-wiring and is looking for a project manager to oversee the repairs. If no progress is made by December 1, 2011, then Rillito is prepared to pay for the re-wiring and seek reimbursement from the County.
- d. **County Fairs:** Nothing new to report (see above).

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e. **American Greyhound Racing: Dan Luciano** reported the OTB hours are reduced due to the wintertime day/night rules so they've moved a bunch of people around. Even with the shortened hours, the first week showed projections are 12% up from what was planned.

3. Optional Industry Stakeholder Association

a. **Arizona Greyhound Association:** Nothing new to report

b. **Arizona Quarter Racing Association: Loretta Brasher** – The AQR had a long, hot dry spell. Turf offered them three races a day and they are filling those races so a big "Thank You" to Turf. On a sad note, the Annual Sale was cancelled due to a lack of horses. This has hurt their membership. They are checking with Rillito to see if they can have a sale of two-year olds in February 2012.

c. **Arizona Thoroughbred Breeders Association: Yvonne Kunz, Executive Director** – Wants to remind everybody their sale is next week, October 20, 2011, at West World.

d. **Horsemen's Benevolent & Protective Association:** Nothing new to report

e. **Jockey's Guild:** No report

D. **Commission Reports: Director Powell** advised that Senator Steve Peirce has been tentatively scheduled to appear at the November 09, 2011 meeting to talk about the racing industry.

The next regular Commission meeting will be held **Wednesday, November 9, 2011, at 10:00 a.m.** in Building Conference Room Suite 250, at 1110 West Washington Street, Phoenix, Arizona 85007.

E. Call to the Public

Patti Shirley – Announced there is a raffle for a Nissan Leaf with all proceeds to benefit the Equine Encore Foundation.

John Chase – He submitted an Amicus Brief to the Commission. **Director Powell** advised this information would be sent to the Commission following the meeting; that since it was not on the Agenda it may not be discussed.

Steve Nolan – Discussed his continued concerns regarding Turf Paradise and the future of Arizona racing.


Adjournment:

Chair Owens called for a Motion to Adjourn. **Commissioner McClintock** moved to adjourn the meeting. **Commissioner Kelly** seconded the motion. **Motion Carried.**

This public meeting adjourned at 12:15 p.m.

Dated this 9th day of October, 2011

Arizona Racing Commission

By 
Cassie Goodwin, Commission Secretary